IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1344 of 1993

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

BHUPENDRAKUMAR MAFATALAL BAROT &2 - Petitioner(s)

Versus

ANANDIBEN DASHRATHLAL BAROT &5 - Respondent(s)

==========

Appearance :

MR VC DESAI for Petitioner No(s).: 1,2 - 2.

MR KR BRAHMBHATT for Respondent No(s).: 1,2,3,4,5.

==========

CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 16/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 14th September, 1993 passed by the learned Joint District Judge, Mehsana in Regular Civil Appeal No.117/1992, the appellants (defendants in Regular Civil Suit No.128/1987) have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "**the Rent Act**").

The suit premises, a house bearing City Tika No.11/1 Survey No.71 and part of the land bearing City Survey No.70 were purchased by one Dashrathlal Barot, the predecessor of the plaintiffs, from one Buniba, the predecessor of the defendants, and the defendant no.1 for a sum of Rs.2,000=00 under a registered sale-deed executed on 22nd December, 1952 (Exh.37). On 23rd December, 1952 the suit house was leased to the said Buniba and Bhanumatiben for a monthly rent of Rs.5=00. A rent note (Exh.38) was executed by the said Buniba and Bhanumatiben on 23rd December, 1952. The predecessor Dashrathlal Barot passed away in the year 1983. The plaintiffs, successors of the said Dashrathlal instituted Regular Civil Suit No.128/1987 in the Court of Civil Judge (J.D.), Patan for recovery of possession of the suit house and for the amount of arrears of rent due. The plaintiffs alleged that since the death of the late Dashrathlal in the year 1983 the defendants had ceased to pay the rent to the plaintiffs. The defendants were in arrears of rent for more than six months; that the rent was payable by the month; that there was no dispute as to the standard rent of the suit house; that the defendants neglected to pay the rent even after service of notice of demand given under Section 12(2) of the Rent Act.

The defendants contested the suit vide written statement (Exh.13). The defendants denied that the suit house was purchased by the predecessor of plaintiffs as alleged or that they were tenants in the suit house. It was also denied that the defendants had ever paid the rent for the suit house. It was alleged that at the relevant time the deceased Mafatlal Barot had run into debt and was facing attachment order made by the court at Bhavnagar. With a view to avoiding the attachment by the court the suit house was transferred to the deceased Dashrathlal with a tacit understanding that the documents were not to be acted upon.

The learned Civil Judge, by his judgment and order dated 30thSeptember, 1992, held that the plaintiffs were the landlords of the suit house and the defendants were the tenants; that the defendants were in arrears of rent and passed decree for recovery of possession of the suit house in favour of the plaintiffs. Feeling aggrieved the defendants preferred Regular Civil Appeal No.117/1992 in the Court of District Judge, Mehsana which came to be dismissed on 14thSeptember, 1993. Therefore, the present Revision

Application.

Mr.Desai has assailed the judgment passed by the lower appellate court. He has submitted that the lower appellate court as well as the trial court have erred in appreciating the evidence on record and in recording finding against the defendants. He has submitted that the lower appellate court has erred in overlooking the conduct of the plaintiffs. After alleged purchase of the suit house in the month of December, 1952, the late Dashrathlal Barot and after his death in the year 1983 the plaintiffs did not take out any proceeding for mutation of their names in the revenue record. The plaintiffs have also failed to establish that the rent was being paid to the plaintiffs since the date of purchase till the year 1983. In absence of any evidence of receipt of rent, the lower appellate court has erred in recording finding against the defendants. He has submitted that the finding recorded by the lower appellate court is totally perverse. In support of his argument Mr.Desai has relied upon the judgments of the Hon'ble Supreme Court in the matter of **Devi Dass v/s. Mohan Lal**[(1982)1 SCC 495] and of **Smt.Gangabai v/s. Smt.Chhabubai** [AIR 1982 SC 20]. He has also relied upon the judgment of the Bombay High Court in the matter of **Shankarlal Ganulal Khandelwal v/s. Balmukund Surajmal Bharuka (deceased by LRs)** [AIR 1999 Bombay 260].

In the matter of Devi Dass (supra) the Supreme Court has held that in a proceeding under the Rent Act the tenant could have challenged the validity of the sale-deed in favour of the landlord and that the court had to record a finding on that point.

In the matter of Smt.Gangabai (supra) the Supreme Court has held that the finding as to the title by rent court does not operate as res judicata in a subsequent suit for declaration of title instituted in a civil court.

In the matter of Shankarlal Ganulal Khandelwal (supra) the Division Bench of the Bombay High Court has considered the factors such as, “though the defendant had purchased the suit plot from the plaintiff in the year 1972, he did not take any step to get his name mutated in the municipal record till today nor he paid the tax of the suit plot at any time” and upheld the plaintiff's case that the parties had agreed not to act upon the sale document.

In the present case, both the courts below have appreciated evidence on record and have rejected the plea of the defendants. It is true that no evidence has come forth with respect to the payment of monthly rent up to the year 1983 except the oral evidence of the plaintiff no.1. However, considering the sale-deed (Exh.37), the rent note (Exh.38) and the oral evidence on record, I am unable to hold that the finding recorded by the lower appellate court is perverse as contended by Mr.Desai. It is submitted that though the suit house was purchased by the late Dashrathlal Barot as far back as in the year 1952 he did not get the mutation entries made in the revenue record. After his death also the names were mutated long after the death of the late Dashrathlal Barot. In her statement before the City Survey Superintendent (Exh.58) given on 21st April, 1996 the plaintiff no.1 did not refer the suit house having been leased to the defendants. However, that alone would not divest the plaintiffs of their property in spite of the sale-deed (Exh.37) and rent note (Exh.38). The recitals made in the sale-deed do suggest that the consideration money was received by the vendors late Buniba and Bhanumatiben. There is no reason to disbelieve the recitals made in the sale-deed. Besides, in case the sale-deed were not intended to be acted upon, the vendors late Buniba and Bhanumatiben would not have been required to execute the rent note. Moreover, even the defendants did not move for mutation in their names until the year 1980 i.e. For nearly 30 years after the death of their father late Mafatlal Barot.

In view of the above discussion the Revision Application is dismissed. Rule is discharged. The parties shall bear their own cost. Interim relief stands vacated.

(**Ms. R.M.Doshit, J.**)

/moin